

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
v.) No. 2:11-CR-82
)
)
NEWELL LYNN SMITH,) (GREER / GUYTON)
ARMIDA J. DI SANTI,)
MARK C. SAWYER, and)
MILTO DI SANTI,)
)
Defendants.)

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b), and by Order of Reassignment [Doc. 5], for disposition or report and recommendation regarding disposition by the District Court as may be appropriate. This case is before the Court on Defendant Mark Sawyer's Second Motion to Continue Pretrial Deadlines and Trial Date [Doc. 78], filed on August 24, 2012. The motion states that counsel needs additional time to analyze the voluminous discovery, which was last supplemented on July 12, 2012, and to interview witnesses, which will require extensive travel. Counsel also states that the heavy caseload of the Federal Defender Services has restricted the time that she has had to devote to this case. The Government responded [Doc. 79] on September 7, 2012, that it does not oppose a brief continuance of the trial date and motion deadline in this case.

The parties participated in a telephone conference on September 26, 2012. Assistant United States Attorney Matthew T. Morris represented the Government. Attorney Daniel A. Lurvey

represented Defendant Armida Di Santi. Federal Public Defenders Nikki C. Pierce and Tim S. Moore represented Defendant Mark Sawyer. Attorney Frank J. Gaviria represented Defendant Milto Di Santi. The Court was notified just before the telephone conference that Attorney Sandy Becher, counsel for Defendant Newell Smith, was not able to participate. Attorneys Lurvey and Gaveria joined in Defendant Sawyer's motion to continue the trial and all pretrial dates and deadlines on behalf of the Defendants Di Santi. Attorney Lurvey stated that he believed Defendant Smith would also like to join in the motion. The Court declined to set a new trial date in Attorney Becher's absence but reset the motion deadline to November 5, 2012, and the response deadline to December 3, 2012. The Court informed the parties that it would address the continuance of the trial date and schedule a new motion hearing at a second telephone conference on October 5, 2012.

All counsel participated in a telephone conference on October 5. The parties informed the Court that they had agreed on a new trial date of May 7, 2013. The new deadline for providing expert disclosures is December 3, 2012. The Court also scheduled a new motion hearing for January 18, 2013, at 9:30 a.m., and a new final pretrial conference for April 19, 2013, at 11:00 a.m., both of which will occur in Knoxville. April 19, 2013, will also be the deadline for concluding plea negotiations. The parties agreed on this new schedule.

Initially, the Court **GRANTS** the oral motions of Defendants Armida and Milto Di Santi to join in Defendant Sawyer's motion to continue.¹ The Court finds the joint motion to continue the trial date and all deadlines to be well taken and that the ends of justice served by

¹The Court notes that although Defendant Smith never formally joined in the motion to continue, during the September 26 conference, Attorney Lurvey stated that Attorney Becher, on behalf of Defendant Smith, also wanted a continuance of all deadlines. Attorney Becher did not oppose the requested continuance during the October 5 conference.

granting a continuance outweigh the interest of the Defendants and the public in a speedy trial. 18 U.S.C. § 3161(h)(7)(A). First, the Court observes that it has already declared [Doc. 46] this case to be complex for purposes of the Speedy Trial Act, finding that it is unreasonable to expect the parties to adequately prepare for pretrial proceedings or for the trial within the established time limits. See 18 U.S.C. § 3161(h)(7)(B)(ii). The Defendants continue to review over 10,000 discovery documents and have received supplemental discovery as recently as July 12. Moreover, counsel need additional time to locate and interview numerous witnesses. Additionally, in the past, defense counsel have indicated an intent to consult with an environmental expert about this case. Accordingly, counsel have agreed to reset the motion deadline to November 5, 2012.

Once pretrial motions are filed, the Court will need time to hold a motion hearing and to rule upon any motions. See 18 U.S.C. § 3161(h)(1)(H). This motion hearing has been scheduled for January 18, 2013. In light of the amount of preparation remaining, the complex nature of the case, and the need to reschedule the motion hearing in the new year, the Court finds that the Defendants could not be ready for trial by February 5, 2013, or in less than eight months. See 18 U.S.C. § 3161(h)(7)(B)(ii) & (iv). Accordingly, the Court finds that the failure to grant a continuance would deny counsel the reasonable time necessary for effective preparation, even taking into account counsels' exercise of due diligence. 18 U.S.C. § 3161(h)(7)(B)(iv).

Additionally, counsel for Defendant Sawyer have informed the Court that they are experiencing an unusually heavy caseload in the Greeneville division. The Federal Defenders Services in Greeneville has recently added a new attorney to help alleviate this problem. Nevertheless, the Court finds that the failure to grant the requested continuance would unreasonably deny Defendant Sawyer the continuity of counsel. 18 U.S.C. § 3161(h)(7)(B)(iv).

The joint Second Motion to Continue Pretrial Deadlines and Trial Date [Doc. 78] is **GRANTED**. The trial of this matter is reset to **May 7, 2013**. The Court also finds that all of the time between the filing of the motion to continue on **August 24, 2012**, and the new trial date of **May 7, 2013**, is fully excludable time under the Speedy Trial Act for the reasons set forth herein. See 18 U.S.C. § 3161(h)(1)(D), -(1)(H), and -(7)(A)-(B).

With regard to other scheduling in this case, the Court has already ordered [Doc. 81] that the new motion deadline is **November 5, 2012**, and the new response deadline is **December 3, 2012**. Disclosure of expert information required by Rule 16(a)(1)(G) and (b)(1)(C) of the Federal Rules of Criminal Procedure shall be made on or before **December 3, 2012**. A motion hearing for any pretrial motions is set for **January 18, 2012, at 9:30 a.m., in Knoxville, Tennessee**. The parties are to appear before the undersigned for a final pretrial conference on **April 19, 2013, at 11:00 a.m., in Knoxville, Tennessee**. This date shall also be the deadline for concluding plea negotiations and the deadline for providing reciprocal discovery. Finally, the Court instructs the parties that all motions *in limine* must be filed no later than **April 22, 2013**. Special request for jury instructions shall be submitted to the District Court no later than **April 26, 2013**, and shall be supported by citations to authority pursuant to Local Rule 7.4.

Accordingly, it is **ORDERED**:

- (1) The oral motions of Defendants Di Santi to join in the Second Motion to Continue Pretrial Deadlines and Trial Date [Doc. 78] are **GRANTED**;
- (2) The Defendants' joint Second Motion to Continue Pretrial Deadlines and Trial Date [Doc. 78] is **GRANTED**;
- (3) The trial of this matter is reset to commence on **May 7, 2013, at 9:00 a.m.**, before the Honorable J. Ronnie Greer, United States

District Judge;

(4) All time between the filing of the motion to continue on **August 24, 2012**, and the new trial date of **May 7, 2013**, is fully excludable time under the Speedy Trial Act for the reasons set forth herein;

(5) The new deadline for filing pretrial motions is **November 5, 2012**. Responses to motions are due on or before **December 3, 2012**;

(6) The deadline for disclosure of expert testimony is extended to **December 3, 2012**;

(7) A hearing on any pretrial motions shall be held before the undersigned on **January 18, 2013, at 9:30 a.m., in Knoxville, Tennessee**;

(8) A final pretrial conference before the undersigned is set for **April 19, 2013, at 11:00 p.m., in Knoxville, Tennessee**;

(9) **April 19, 2013**, is also the deadline for providing reciprocal discovery and concluding plea negotiations;

(10) Motions *in limine* must be filed no later than **April 22, 2013**; and

(11) Special requests for jury instructions with the appropriate citations to authority shall be submitted to the District Court no later than **April 26, 2013**.

IT IS SO ORDERED.

ENTER:

/s H. Bruce Guyton
United States Magistrate Judge